

REVISED LOCAL RULES

OF

PRACTICE

METROPOLITAN
GENERAL SESSIONS COURT

DAVIDSON COUNTY, TENNESSEE

Criminal Division

Effective May 7, 2008

GENERAL SESSIONS RULES

EFFECTIVE May 7, 2008

CRIMINAL RULES 3

SET ASIDE ORDER 15

ORDER OF CONTINUANCE 16

ORDER ADOPTING RULES 17

CRIMINAL RULES

RULE 1. APPLICABILITY AND SUSPENSION OF RULES

1.01 Former Rules Void

All former rules of local practice except as readopted herein are void.

1.02 Applicability

Each rule is applicable in all General Sessions Court proceedings in Davidson County, Tennessee. Each rule is applicable in all types of cases unless otherwise indicated by a particular rule.

1.03 Suspension of Rules

Whenever the Court determines that justice requires it, the Court may suspend any of these rules.

1.04 Appropriate Attire Required for Court

All parties, including Counsel and witnesses, shall dress appropriately for Court.

Please do not enter the Courtroom wearing a halter, t-tops, or see through tops, shorts, no exposed midriff, no underwear exposed, hats or any other inappropriate clothing.

RULE 2. APPEARANCE OF COUNSEL

2.01 Counsel of Record and Entry of Appearance

Counsel must be licensed in the State of Tennessee in order to practice law or represent others. An unlicensed person will not be permitted to represent another party in the General Sessions Courts of Davidson County.

Whenever a Defendant in a criminal case is determined by the Court to be indigent and/or a conflict with the Public Defender representing the co-defendant(s) is determined, an Order shall be signed by the Judge appointing Counsel and setting forth the indigency finding and identifying the appointed Counsel. Appointed Counsel shall continue to represent the Defendant by Order of the Court of competent jurisdiction.

All Counsel who have entered an appearance in a case shall be noted as Counsel of record. Counsel shall enter a written appearance at the earliest practicable time by notifying opposing Counsel and the Criminal Court Clerk's office. A Motion for a Set Aside Order shall be considered an appearance by the attorney filing said filing of a Motion.

Before any attorney who has been licensed less than two (2) years shall be eligible to accept appointments in criminal cases in the Davidson County General Sessions Court, he or she shall attend a training seminar sponsored by the Court.

Any attorney who accepts an appointment in the Davidson County General Sessions Court in a criminal case, where the defendant is incarcerated, shall continue to represent that client during the period of time between bind over and arraignment in Criminal Court.

2.02 Withdrawal of Counsel

No attorney may be allowed to withdraw except for good cause and by leave of Court upon motion after notice to the defendant and to the Office of the District Attorney General.

2.03 Conduct of Counsel

During trial, Counsel shall not exhibit familiarity with witnesses or opposing Counsel and shall not use first names of adults. Counsel, parties and witnesses shall be expected to conduct themselves with appropriate decorum at all times in the Courtroom.

When addressing the Court, Counsel shall introduce herself/himself to the Court.

Counsel shall stand while examining witnesses, addressing the Court, or making objections.

Counsel who anticipate being late for Court shall promptly notify the Clerk of the Court or any other person designated by each Division.

Counsel shall not announce being ready for trial unless the defendant is present or, in the case of the Assistant District Attorney, he/she is assured of the immediate availability of the prosecution's witnesses.

RULE 3. TRIAL CALENDAR (RESERVED)

RULE 4. SETTING CASES

4.01 Setting of Cases

Cases shall be tried on the date they are set on the Court's docket, unless, for a good cause shown or upon agreement of the parties, the Court resets them for trial at a later date or continues them to a specific date.

RULE 5. CONTINUANCES

5.01 Continuances

An Order of Continuance must be filed in the Clerk's office no later than five (5) business days prior to the Court date. Said Orders may be obtained in the Criminal Court Clerk's office and signed by the Judge who presides over the division where the case originated. The originating special or substitute Judges shall not sign an Order of Continuance. If the Judge is not available, the Presiding Judge shall address the issue. No continuances are to be requested by e-mail communications, (except for probation officers with the permission of their supervising Judge). Continued cases will be reset on the originating Judge's docket. Cases may only be transferred to another division with the permission of both Judges.

RULE 6. SET-ASIDE ORDERS

6.01 Criminal Set-Aside Orders

An Order to Set Aside may be obtained in the office of the Criminal Court Clerk at the A. A. Birch Building. Said Orders may be obtained in the Criminal Court Clerk's office and must be signed by the Judge who presides over the division where the case originated. If the originating Judge is not available, the Presiding Judge shall address the issue. Substitute Judges shall not sign an Order to Set Aside. The requesting party must submit a copy of the Order to Set Aside to the front of the Criminal Court Clerk's file cover along with the Set Aside Order. Cases are to be reset on a trial docket appropriate to the offense.

An executed Order to Set Aside shall be filed with the Clerk's office by the party seeking the Order.

The Order to Set Aside shall be signed by the attorney or by the defendant, if the defendant is pro-se, requesting the Order with the reset date, and a copy shall be delivered to the Office of the District Attorney.

Any attorney requesting an Order to Set Aside shall become attorney of record and recorded on the warrant accordingly.

An Order to Set Aside may be obtained in the Criminal Court Clerk's office. Any Judge may agree to sign same if the following conditions are met and if the defendant has no previous charge for failure to appear on the referenced warrant:

1. If defendant has been released on his/her own recognizance (ROR) or a self-insured bond, a bond must be made; or
2. If a defendant has been released on Pretrial Release, a Pretrial Release officer must verify in person, by telephone, facsimile, or e-mail that Pretrial Release will stay on the bond; or
3. If a defendant posted a bond through a bonding company, a written statement from the bonding company certifying they will remain on the bond pursuant to the original bond agreement with the defendant must be present with the referenced warrant at the time the Order to Set aside is requested; this statement may be transmitted to the Court via a facsimile transmission to the Clerk's office.

An Order to Set Aside will be granted absent the above conditions, provided the defendant can furnish the following proof:

1. Statement from a licensed medical doctor giving the nature of the illness at the time of the defendant's arraignment or Court date; or
2. Obituary listing the next of kin; or
3. Proof of being incarcerated at the time of arraignment or Court date, acceptable proof may include e-mail, telephone, or any other electronic communication from the facility verifying the incarceration.

6.02 Request For a Second Set Aside Order

Anyone requesting a Judge sign a ***second*** criminal Order to Set Aside for a person who has forfeited the initial criminal Order to Set Aside must return to the General

Sessions Court Judge who originally signed the first Order to Set Aside. Said Judge is the only person authorized to sign same.

The requesting party must attach a copy of the front of the Criminal Court Clerk's file and a copy of the affidavit. Further, if any attorney is requesting said Order to Set Aside, a copy of same shall be delivered to the bondsman (if applicable) and to the Office of the District Attorney General. If a bondsman is requesting said Order to Set Aside, it needs to be signed by the judge pursuant to this rule. Once filed with the Clerk, copy of same shall be delivered by the bondman to the attorney of record (if applicable) and to the Office of the District Attorney General.

Cases are to be reset on a trial docket appropriate to the offense.

If a bondsman is requesting said Order to Set Aside, a copy of same shall be delivered to the attorney of record (if applicable) and to the Office of the District Attorney General. Cases are to be reset on a trial docket appropriate to the offense.

7. Reserved

8.0 RETIRED CASES

8.01 Retired Cases

If the office of the District Attorney files a Motion to Reinstate the prosecution of a retired case, a copy of such Motion shall be sent to both the defendant and any defense attorney of record giving a ten (10) day notice of the hearing of such Motion. The copy of the Motion sent to the defendant shall be sent by certified mail, return receipt requested to the last known address.

Upon a case being placed on retired status, Counsel of record for the Defendant may move to be relieved as Counsel of record for any further proceedings.

Upon motion of the defendant, or upon a retired case coming on for a scheduled review, a criminal case which has been retired or inactive for a period of one (1) year shall be dismissed by the Judge of the Court in which the case was retired or place on inactive status, at the expiration of said year.

Upon motion of the defendant, retired cases will be dismissed after a period of one (1) year, or at the time specified on the judgment.

RULE 9. EXPUNGEMENT ORDERS

9.01 Expungement of Dismissed Criminal Cases

All Orders of Expungement shall be initiated through the Criminal Court Clerk's Office effective October 1, 1998. The Criminal Court clerk shall be responsible to deliver the Orders of Expungement to the Office of the District Attorney for signature along with an executed copy of the warrant(s), to the administrative staff for signature of the appropriate Judge. The Office of the District Attorney shall sign Order of Expungement as evidence of agreement or shall decline to sign. The Office of the District Attorney shall be responsible to return said Orders to the Criminal Judge's Court Clerk's office. The administrative staff of the originating court will be responsible for obtaining the Judge's signature and returning said Order of Expungement(s) to the Criminal Court Clerk's Office. It will be the responsibility of the Criminal Court Clerk's office to notify the attorney or defendant after the Judge has executed the Order of Expungement for filing purposes.

Special or substitute Judges shall not sign Expungement Orders.

In the event a case is dismissed following a bench trial in the Davidson County General Sessions Court said case shall be automatically expunged by the Criminal Court Clerk.

9.02 Expungement of Retired Cases

When a party seeks expungement of a case that was previously retired by the Court, a Motion to Dismiss must be simultaneously filed with the Order of Expungement along with an executed copy of the warrant(s) to be expunged, unless the case was scheduled for review by the Court when it was retired. A Motion to Dismiss may not be made until one (1) year after the case was retired unless otherwise specified on the warrant at the time the case was retired.

The Order of Expungement may be signed by the Judge on whose docket the Motion to dismiss is set, or when the case comes on for a schedule review; the Order need not be entered by the Judge who made the original disposition of the case. If an Agreed Order is not submitted to the Judge for signature, the Motion shall be placed on the docket by the requesting attorney or defendant.

9.03 Expungement of Cases Pursuant to T.C.A. § 40-35-313

When a party seeks expungement of a case pursuant to T.C.A. § 40-35-313, a Motion to Dismiss must be simultaneously submitted with notice to the District Attorney's office accompanied by written proof that all requirements have been successfully completed; alternatively, if a case was set for further review by the Court at the time of the original disposition, a Motion to Dismiss is not required.

After an Agreed Order of Expungement is signed, the attorney or defendant shall file said Order with the Criminal Court Clerk's office.

RULE 10. PETITION TO SUSPEND OR MODIFY

10.01 Scheduled Petition to Suspend or Modify

Any Petition to Suspend or Modify a Sentence must have a Court date and time said Petition is expected to be heard and in all cases, must be set before the original sentencing Judge. A copy of the Petition must be sent to the Office of the District Attorney at least five (5) business days prior to the scheduled hearing date. If the Petition to suspend or modify does not include the Court date and time, the Criminal Court Clerk will not set the Petition on the docket.

RULE 11. PLEA AGREEMENTS

11.01 Plea Agreements – Criminal Bond Dockets

All plea agreements shall be accompanied by a written plea agreement which may consist of the original warrant with the appropriate language reflecting the disposition of the case. All plea agreements shall be signed by the Defendant.

RULE 12. BAIL

12.01 Detention Without Permitting Bond

A Judicial Commissioner may use discretion as to the setting of bail, but a reasonable bail shall be set, within a reasonable time, in all cases except for capital offenses where the proof is evident or the presumption great, in which case the defendant may be held without bail.

The practice of hold for “open Court” is prohibited except when a defendant is being detained awaiting transportation to another judicial district within the State or awaiting extradition.

12.02 Duration of Capias

Any capias issued pursuant to a forfeit, either conditional or final, shall remain in effect until the defendant is apprehended and returned to custody and a disposition is made of the case.

All other capiases shall expire after six (6) months from issuance and may be reissued after that time.

12.03 Surrender by Bond Companies

Any surrender of a defendant by a bonding company shall be in compliance with T.C.A. §40-11-130 through §40-11-137.

The following procedures are to be followed for the surrender of a defendant by means of a certified copy of the defendant’s bond where no capias has been issued for the defendant’s arrest:

1. This procedure only applies to those cases where bondsman or Pretrial Release surrenders a defendant on a certified copy of the defendant’s bond and where no capias has been issued for the defendant’s arrest.
2. Any bondsman who intends to surrender a defendant on a certified copy of the defendant’s bond may take the defendant to the Judicial Commissioner on duty in Night Court who shall sign the certified copy of bond and issue a mittimus committing the defendant to the Metropolitan Sheriff’s department. Alternatively, the bondsman may surrender the defendant directly to the custody of the Metropolitan Sheriff’s department.
3. At the same time the mittimus is delivered to the Metropolitan Sheriff’s department, the Judicial Commissioner shall also deliver to the surrendered defendant, if present, a “Notice of Surrendered Defendant” which notice shall confirm the following:

NOTICE TO SURRENDERED DEFENDANT

You have been surrendered (placed back in jail) by your bondsman. While your bondsman has the right to surrender you, you also have a right to a Surrender Hearing. You should consult either your private attorney or the Office of the Public Defender regarding your rights. You will be granted a Surrender Hearing within seventy-two (72) hours.

If the surrendered defendant is not present, the Judicial Commissioner shall deliver the "Notice to Surrender Defendant" to the Metropolitan Sheriff's Department who shall promptly deliver the notice to the surrendered defendant.

4. After the Judicial Commissioner signs the certified copy of the surrendered defendant's bond, the bondsman shall take said certified copy of the bond to the Criminal Court Clerk's bond office located in the Criminal Justice Center.
5. The Criminal Court Clerk's bond office shall retrieve the warrant(s) pursuant to which the certified copy of bond was written and docket the surrender defendant for a Surrender Hearing. The Surrender Hearing shall be set on the next Jail Docket.
6. The surrendering bondsman shall be present at the surrender Hearing in order to state to the Court the reason(s) for the surrender.
7. If the Court finds good cause for the surrender of the defendant, the Court shall sign the certified copy of the bond noting the Court's acceptance of the surrender. The signed certified copy of the bond shall remain with the warrant.
8. The Clerk shall make two (2) copies of the signed certified copy of bond. Both copies shall be given to the surrendering bondsman. The surrendering bondsman may keep one (1) copy. The remaining copy shall be taken by the surrendering bondsman and given to the Metropolitan Sheriff's Department.

12.03 Policy for Arrest Warrant

Reserved.

12.04 Information Intake Sheets

An information sheet entitled “Prosecution Information sheet” must be completed by all prosecutors before a warrant may issue and must be attached to the warrant. This form is provided to the prosecutor by the Judicial Commissioner, and it shall be the duty of the Judicial Commissioner to assure all information has been completed on this form. This form must be completed before a Domestic Violence Warrant may issue.

RULE 13. INTERPRETERS

13.01 Language Interpreters

Foreign language interpreters will be provided for parties involved during criminal in-court proceedings if sufficient notification is made to the Court Administration Office. The Court does not pay for post adjudication interpretation.

Foreign language interpreters are paid by the Administrative Office of the Courts, if the defendant is declared indigent by the Court. In the event the defendant is not declared indigent, interpretation is taxed with the Court costs. The Court may exercise its discretion to waive said Court costs due to indigency.

Interpreters will be present thirty (30) minutes prior to the scheduled Court appearance.

13.02 Hearing Impaired Interpreters

Sign interpreters are provided for criminal proceedings at the Court’s expense but notification is to be given to the Court Administration Office as soon as the need is determined. Cases involving a sign interpreter will be heard at the beginning of the docket provided the interpreter is prepared for trial.

13.03 Hearing Impaired Persons Brought into Night Court

Hearing-impaired persons who are brought into Night Court for any reason must be informed a Night Court Commissioner will contact an interpreter from the League of Deaf and Hard of Hearing to be present during the proceedings in Night Court. The Judicial Commissioner on duty shall immediately notify a League of Deaf and Hard of Hearing interpreter to be present in Night Court, if made aware. For ADA Accommodations contact the Night Court Commissioner sign is posted in Night Court.

RULE 14. NO-SMOKING POLICY

14.01 General Policy

Pursuant to Metropolitan Ordinance No. 094-1035, and Public Chapter 410 of 2007 effective October 1, 2007, smoking is prohibited in public buildings.

RULE 15. FORFEITURE/PROPERTY SEIZURE WARRANTS

15.01 Policy

Pursuant to Tennessee Code Annotated, §40-33-204, Probable Cause Hearings for the issuance of Forfeiture Property Seizure Warrant will be recorded effective October 1, 1998. All Forfeiture Warrants and taped recordings will be filed and maintained by the Criminal Court Clerk. A certified copy of the recording shall be made available upon request of any party and shall be admissible as evidence.

Rule 16. RESTRICTED DRIVER'S LICENSE

16.01

All requests for issuance of a restricted driver's license shall be initiated through the Criminal Court Clerk's Office effective October 1, 1998. All paperwork and files relating to restricted driver's licenses shall be maintained in the Criminal Court Clerk's Office.

RULE 17. VIDEO EQUIPMENT GUIDELINES

17.01

All videos played on the General Sessions Court video equipment must meet the following guidelines:

- CD's and DVD's must be viewed by parties prior to coming to court. Video must be playable in a computer video player or DVD player through TV monitor device without having to install additional software.
- No third party software will be installed on General Sessions Court computers to play videos due to network security issues.

- Most standard video formats are as follows and should be used, MPG, MPEG, WMV, AVI, VOB MOV, for computer or DVD compliant formats playable through DVD player.

**IN THE GENERAL SESSIONS COURT FOR METROPOLITAN
NASHVILLE-DAVIDSON COUNTY, TENNESSEE
DIVISION _____**

STATE OF TENNESSEE

vs.

WARRANT NO.(S). _____

DATE OF REQUEST: ____/____/____

REQUESTED BY: _____

BAR ID: _____

SET ASIDE ORDER

It appearing to the Court that there has heretofore a Conditional Forfeiture has been entered by the Court against the above-named Defendant, and it further appearing to the Court that the Defendant has shown to the Court good cause why the Conditional Forfeiture should be set aside;

It is therefore ORDERED, ADJUDGED and DECREED that the Conditional Forfeiture in Division ____ heretofore entered against the Defendant is hereby set aside upon payment of the forfeiture costs.

ENTERED this _____ day of _____, 200 ____.

JUDGE

DIVISION

THE PARTIES SEEKING THE SET ASIDE ORDER SHALL PRESENT A COPY OF THE FILE JACKET AND A COPY OF THE AFFIDAVIT ON THE WARRANT AT THE TIME OF THE REQUEST.

DO NOT WRITE BELOW THIS LINE - CLERK'S USE ONLY

Court Date: ____/____/200____ at _____

To request handicapped accommodations
Please contact (615) 862-4260.

**IN THE GENERAL SESSIONS COURT FOR METROPOLITAN
NASHVILLE-DAVIDSON COUNTY, TENNESSEE**

STATE OF TENNESSEE

vs

WARRANT NO. _____

ORDER OF CONTINUANCE

It is hereby Ordered that the above-styled case set for hearing on _____
at ____:____ is hereby CONTINUED to the date and time entered on this Order at the request of the signed.

Counsel _____

State _____ Defense _____

TO THE PARTY SEEKING THE CONTINUANCE: INITIAL PERSONS TO BE NOTIFIED BY THE CLERK:

TO THE CLERK: YOU ARE HEREBY ORDERED TO NOTIFY ONLY THE PERSONS INITIALED BELOW.

1. ____ Notify the victim Witness Office.
2. ____ Send a cancellation and new Court date to all Police personnel previously subpoenaed
3. ____ Notify each witness listed on the warrant.
4. ____ Notify the defendant.
5. ____ Notify the defense Counsel.
6. ____ Notify the Office of the District Attorney.
7. ____ Check for co-defendant(s), and notify co-defendants and Counsel.

If the continuance is granted at least five (5) days prior to the original Court date, mailing notice is sufficient, except for police who must receive a cancellation notice; if fewer than five (5) days, telephone the above-listed persons, in addition to mailing notices.

ENTERED THIS _____ day of _____, 20____.

JUDGE

This case is continued to _____ at _____.
(Month) (Day) (Year) (Time)

COURT ROOM NUMBER _____

_____, Clerk.

To request handicapped accommodations
Please contact (615) 862-4260.

ORDER ADOPTING RULES

These Revised Local Rules of Practice are hereby adopted for the Metropolitan General Sessions Court for Davidson County and will take effect May 7, 2008.

JUDGE GALE B. ROBINSON
Division I

JUDGE WILLIAM E. HIGGINS
Division VII

JUDGE DAN EISENSTEIN
Division II

JUDGE LEON RUBEN
Division VIII

JUDGE ANGELITA DALTON
Division III

JUDGE SUE MCKNIGHT EVANS
Division IX

JUDGE GLORIA A. DUMAS
Division IV

JUDGE CASEY E. MORELAND
Division X

JUDGE DIANNE TURNER
Division V

JUDGE JOHN AARON HOLT
Division XI

JUDGE MICHAEL F. MONDELLI
Division VI